

ZONING BOARD OF APPEALS MINUTES

March 12, 2013 – Regular Meeting
Delta Township Administration Building

I CALL TO ORDER

Chairman Reed called the meeting to order.

II PLEDGE OF ALLEGIANCE

Chairman Reed led the Board and others present in reciting the Pledge of Allegiance to the Flag.

III ROLL CALL

Members Present: Arking, Barnhart, Hicks, Newman, Parr, Reed

Members Absent: Laforet

Others Present: Chris Gruba, Assistant Planner

IV SET AND ADJUST AGENDA

Mr. Reed asked if there were any changes to the agenda.

Mr. Gruba said there were no changes.

V APPROVAL OF MINUTES

November 13, 2012 Annual Meeting

MOTION BY PARR, SECONDED BY ARKING, THAT THE NOVEMBER 13, 2012 ANNUAL MEETING MINUTES BE APPROVED AS AMENDED. VOICE VOTE. CARRIED 6-0.

VI OLD BUSINESS - None

VII NEW BUSINESS

1. **CASE NO. V-13-1-25**: Anthony Freese, 4711 W. Mt. Hope, Lansing, MI. 48917, is requesting a variance from Section 24.3.0 (C) of the Zoning Ordinance in order to demolish and rebuild a house in an I-2 industrial zone.

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Mr. Gruba stated that the property is zoned I-2 and that houses are not permitted by right within this zone. He noted that the house was constructed in 1954 and that the property was rezoned by the Township to industrial in 1958. He noted that the Zoning Board of Appeals usually acts upon section 23.5.0 of the Zoning Ordinance for variance requests, but that this request would pertain to section 24.3.0, which specifically addresses non-conformities.

Mr. Gruba reviewed an aerial photograph of the property and described the existing land uses and zoning surrounding the subject parcel. It was noted that the subject parcel abuts I-2 general industrial to the west, south and east, and I-1 limited industrial to the north across Mt. Hope Highway.

The parcel is 2.81 acres in size with 130 feet of frontage along Mt. Hope Highway. It was noted that the site development standards in the Zoning Ordinance require newly formed I-2 parcels to be at least 2 acres in size with at least 150 feet of road frontage. It was noted that the parcel is still “buildable” for an industrial use, even though it does not meet the site development standards in terms of lot width.

Mr. Gruba noted that a variance was granted for the subject parcel in 2007 to allow for a new 1,792 square foot pole barn. The variance was specifically granted to allow the pole barn to be set back 3 feet from the east side property line, as opposed to the 25 feet required per the Zoning Ordinance. The current owner, Mr. Freese, was also the applicant at the time of the variance request in 2007. At that time, Mr. Freese stated that the variance was sought in order to avoid placing the pole barn on top of the existing domestic-use water well and to avoid removing existing mature trees. The pole barn was constructed in 2008.

The proposed house would be 2,500 square feet in size, an increase over the existing 1,120 square feet. The new house would meet the required building setbacks for the I-2 zoning. The proposed house would connect to the existing sewer line along Mt. Hope Highway, as does the existing house. The proposed house would not connect to the existing water line along Mt. Hope Highway and would continue to utilize the water well.

A sketch of the proposed house was given to staff that illustrates the building size and setbacks. Pictures of the existing site were shown to the Board.

Mr. Gruba noted that the 2013 Comprehensive plan for Delta Township recommends the site to be used for industrial uses. The 130 foot width of the lot does not preclude the parcel from being utilized for an industrial use. However, the narrower lot width may limit the number of potential industrial uses. Township staff has not been contacted by anyone wishing to use the subject parcel for an industrial use. Staff was contacted by Jill Underhill, who owns the property to the west at 4715 W. Mt. Hope. Ms. Underhill

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questioned whether her taxes would be increased if the proposed house was constructed at 4711 W. Mt. Hope. Ms. Underhill also stated that she has no intention of selling her property in the future.

The proposed home would not exceed 50% of the area of the parcel, as is required per code in the I-2 zones. I-2 zoning does not have any height limitations on structures. Mr. Gruba reviewed Section 24.3.0 (C) of the Zoning Ordinance, stating that one or both of the two criteria must be met in order for the Board to grant the variance.

Mr. Gruba asked whether there were any questions from the Board.

Mr. Reed asked whether any of section 23.5.0 of the Zoning Ordinance would apply. Mr. Gruba noted that section 23.5.0 does not apply to this variance, and that one of the two criteria from section 24.3.0 (C) must be met.

Ms. Parr stated that the width of the property would limit the use of the property as industrial. She also noted that the applicant came before the ZBA in 2007 to request a variance for the pole barn with the intention of living on the property in perpetuity. She believed that Mr. Freese would not have requested the variance for the pole barn had he known that he could not obtain approval for building a new home.

Mr. Barnhart questioned whether a pole barn is allowed in I-2 zoning. Mr. Gruba stated that pole barns are allowed in I-2 zoning. Ms. Parr stated that the new pole barn replaced an existing pole barn on site. Mr. Barnhart noted that the variance request pertained to constructing a new home on the site.

Mr. Gruba noted that the applicant, Anthony Freese, was present before the Board.

Mr. Reed questioned whether there were any further questions for staff. Seeing none, he invited Mr. Freese to speak before the Board.

Mr. Anthony Freese introduced himself as the applicant for the variance request and that he resides in the house with his wife, Jesus Flores. Jesus' mother, Olga, is the actual owner of the house.

Mr. Reed asked Mr. Freese if he was the applicant for the pole barn in 2007. Mr. Freese stated that he was the applicant.

Mr. Freese stated that if the ZBA granted the variance for the proposed house, Ms. Olga Flores would then deed the property to him and his wife. He noted that the next door neighbor, the Underhills, used to own the entire block. He indicated that the existing house was built on a concrete slab without wall insulation, and that updating the house would be more difficult than demolition and new construction. Mr. Freese stated that

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Ms. Olga Flores would then move into the house and not sell the property. He also stated that Alliance Interiors to the east, formerly Delphi, had tried to buy both the Flores property and the Underhill property but both owners refused.

Mr. Hicks made mention of Section 24.2.0 in the Zoning Ordinance regarding non-conforming uses. Within that section, only letter “B” makes reference to the Zoning Board of Appeals. Mr. Hicks believed that the Zoning Board of Appeals did not have authority to grant a variance from section 24.3.0 (C), as believed by the Planning Division. Mr. Hicks believed that the ZBA did have authority under section 24.3.0 (B), but not (C).

Ms. Parr stated that the background information was helpful regarding the similar variance request for Mr. Slyvertooth. Ms. Parr indicated that the Slyvertooth variance was granted in 1998 which allowed a modular home to be located in an industrial zone. The variance was approved, but the modular house was never installed.

Mr. Hicks believed that section 24.3.0 (C) appears to only be applicable to natural disasters, fires and Acts of God, and not willful demolition and reconstruction. Mr. Barnhart believed that the term “destruction” in this section still applied to willful demolition.

Mr. Newman believed that section 24.3.0 (C) could be construed as pertaining to Acts of God, but that the section “seemed to be frowning upon upgrades” for non-conforming properties.

Mr. Barnhart suggested tabling the variance until the applicable section from the Zoning Ordinance could be determined.

Mr. Reed asked Mr. Gruba whether the Township attorney had reviewed the variance request. Mr. Gruba stated that Township attorney, David Revore, had not reviewed it.

Mr. Hicks questioned whether Mark Graham, as the Zoning Administrator, may be able to make an interpretation of the Zoning Ordinance in a way that would approve the request.

Mr. Arking questioned whether the term “destruction” was defined in the Zoning Ordinance. Mr. Gruba stated that “destruction” was not defined in the Ordinance.

Mr. Hicks asked Mr. Freese when he hoped to begin construction. Mr. Freese stated that he would still need to contact the builder to create a blueprint of the floor plan, which he had hoped to do last month when he was informed by the Planning Division that a variance would be required.

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Mr. Hicks questioned whether the ZBA was still scheduled to convene once per month. Mr. Gruba stated that the ZBA is set to meet once a month and that the next regularly scheduled meeting would be April 9th. Mr. Reed noted that a special ZBA meeting could be convened at any time.

Mr. Hicks explained to the applicant that if the Board were to act upon Section 24.3.0 (C), the variance would probably be denied. However, if the variance were tabled until the Zoning Administrator could make an interpretation, it may be beneficial to the applicant.

Mr. Freese asked the Board whether a decision could be made immediately instead of tabling the request. Mr. Reed stated that a decision could be made but that it would probably be unfavorable to the applicant.

Ms. Parr stated that it seemed unfair to the applicant to deny the variance request for the demolition and construction of the house, when the Board approved the variance request for the pole barn in 2007. She noted that in 2007, Mr. Freese informed the Board that he intended to “remodel” the house in the future. (page 4 in the minutes from 2007)

Mr. Freese asked the Board to table the variance request until further interpretation of the Zoning Ordinance was made.

MOTION BY HICKS, SECONDED BY ARKING, THAT VARIANCE REQUEST V-13-1-25, A VARIANCE FOR THE REESTABLISHMENT OF A NON-CONFORMING USE IN THE I-2 ZONING DISTRICT, BE TABLED UNTIL APRIL 16TH 2013, FOR A SPECIAL ZONING BOARD OF APPEALS MEETING.

ROLL CALL VOTE. CARRIED 6-0.

VIII. OTHER BUSINESS – None

IV STAFF COMMENTS - None

X BOARD COMMENTS

Mr. Barnhart inquired as to the status of the proposed Olive Garden restaurant adjacent to the Lansing Mall. Mr. Gruba noted that staff recently learned that the Olive Garden would no longer be moving to the outparcel site adjacent to the Lansing Mall.

Mr. Barnhart inquired as to the status of the proposed new theater at the Lansing Mall. Mr. Gruba noted that it was certain that the new theater would be built at the Lansing Mall and that it would take the place of the previous Mervyns. However, plans had not

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yet been submitted.

Mr. Hicks noted that the proposed theater would include demolishing the Mervyns wing at the mall.

Mr. Barnhart noted that Benson's Vinaigrette's went out of business. Mr. Hicks noted that the company that owns Olive Garden intends to locate another restaurant in the Township, but that the specific restaurant brand has not been identified.

Mr. Reed and Mr. Barnhart noted that their terms expired this year and must be renewed by the Township Clerk.

Mr. Arking questioned whether Township staff has compiled a list of opinions regarding past Zoning Ordinance interpretations.

Mr. Hicks believed that the last interpretation that was requested involved outdoor seating for Reno's.

Mr. Hicks suggested that computer tablets may be convenient for ZBA members, as the Township Board and Planning Commission now use tablets. He noted that it may be a good alternative to having to print off physical ZBA packets.

XI ADJOURNMENT

Chairman Reed adjourned the meeting at 6:44 p.m.

DELTA CHARTER TOWNSHIP

Mary Clark, Secretary to the Zoning Board of Appeals

Minutes prepared by Christopher Gruba